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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1961

No. 326

VIRGIL BALL, County Treasurer,
Plaintiff-Appellee,

vs.

DELINQUENT LANDS ETC., 1958;

In the Matter of Application for Judgment
by the County Collector,

Tax Objections for the Year 1958,
Claude W. Anderson, et al.
Objectors-Appellants.

APPEAL FROM THE SUPREME COURT OF ILLINOIS

JURISDICTIONAL STATEMENT

CHARLES R. HOLTON
11 South LaSalle Street
Chicago 3, Illinois
Counsel of Record;

ARTHUR D. YOUNG
Young Building
Lewistown, Illinois
Associate Counsel;

Attorneys for Appellants.

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OFFICIAL REPORT OF OPINION OF THE COURT BELOW

The opinion, findings and order of the Supreme Court of Illinois are reported in *Virgil Ball, County Treasurer, Plaintiff-Appellee, vs. Claude W. Anderson et al., Objectors-Appellants*, No. 36074; a copy of which is attached herein as Appendix A.

STATEMENT OF GROUNDS UPON WHICH JURISDICTION OF THIS COURT IS INVOKED

This is a tax objection case, involving validity of assess-

ments for tax purposes. Constitutionality of the Assessment, under the Fourteenth Amendment, was originally raised in the first pleadings filed in the County Court of Fulton County, Illinois, wherein, in one paragraph of the tax objections, all appellants stated:

"That the assessment is void, because ..... property is taken by the procedure of such assessment, without due process of law."

The other paragraphs raised lack of proper notice, lack of a legally constituted board of review, and lack of a hearing. The Supreme Court of Illinois held that the acts of the assessor were valid, under the statute. The question here raised is the constitutionality of the statute, after such construction.

Statutes Involved in this Appeal

All of the following citations are to Chapter 120, Illinois Revised Statutes, 1959 Edition:

Section 511, providing for quadrennial assessment of real estate in Illinois.

Sections 575 and 576, providing for return of books by local assessor, and for changes without notice by supervisor of assessments.

Section 581, providing for return of books by Supervisor of assessments to board of review.

Section 489, creating a board to review tax assessments, and providing for its adjournment.

Sections 588 and 589, providing for revision of assessments by the board of review, setting their powers and duties.

Section 584, providing for publication of tax assessment lists of real and personal property.

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Amendment V., Constitution of the United States.

Amendment II., Subsection 2, Constitution of the United States.

Chronology

Date of Judgment overruling Objections in the County Court of Fulton County, Illinois: June 13, 1960.

Date of affirmance by the Supreme Court of Illinois: January 12, 1961.

Date Rehearing denied: March 27, 1961.

Date Notice of Appeal filed: June 20, 1961.

Statute Confirming Jurisdiction of This Appeal

Reference is hereby made to subsection (2) of Section 1257 of Title 28 of the Judicial Code of the United States to sustain rights of Petition to appeal from the final judgment of the Supreme Court of Illinois, the pertinent portions of which are as follows:

"Final judgments or decrees, rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows:

"(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties of laws of the United States, and the decision is in favor of its validity."

Cases Believed to Sustain Jurisdiction

Lyon vs. Alley, 130 U.S. 177, 32 L. Ed. 899;
Mullane vs. Central Hanover Bank & Trust Co., 339 U.S. 306, 70 S. Ct. 652, 656;
Central R. R. Co. vs. Wright, 207 U.S. 127;
Nickey vs. Mississippi, 292 U.S. 393, 78 L. Ed. 1323, 1326;
French vs. Edwards, 80 U.S. 506, 20 L. Ed. 702;
Londoner vs. City of Denver, 210 U.S. 373, 52 L. Ed. 1103, 1112;
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Louisville etc. R. R. Co. vs. Bosworth, 230 Fed. 191;
Nashville etc. R. R. Co. vs. Taylor, 86 F. 168, Appeal dismissed 20 S. Ct. 1022;
Cox vs. Armour, 237 U.S. 413, 35 S. Ct. 625;
Jackson Lumber Co. vs. McCrimmon, 164 Fed. 759.

State Statute of Which the Validity Is Involved

The statute involved here is the Revenue Code of Illinois, and particularly those parts thereof concerned with assessment procedure, as shown in detail in Appendix B, and known as the Revenue Act of 1939.

Questions Presented by This Appeal

(1) Where the assessment statutes of the state of Illinois, as construed by the opinion in the instant case, no

longer provide for notice and hearing, as a matter of *right*, as to a real estate assessment, prior to the time when the said assessment becomes final, is said statute constitutional, as providing due process of law, under amendments five and fourteen of the United States Constitution?

(2) Where the assessment statutes, as to real and personal property, in the said State of Illinois, are contained in the same statutory provision, and where the said provision has been construed as mandatory, to require publication of assessments *of personal property* before July 10, in any assessment year, and where the same said statute has been construed not to be mandatory, *as to real property*, and where the Supreme Court of the State of Illinois has construed the said statute, as to *real* property, to allow publication as late as October 2 in any given assessment year, the question arises as to whether or not said assessment statute is invalid, as not affording equal protection of the law as to owners of *real* property, as distinguished from owners of *personal* property, in the said State of Illinois, and as to whether or not, therefore, the said statute as construed is unconstitutional and void?

(3) Where the said statute providing for assessments in the said State of Illinois, and as to providing a body for hearing as to complaints on such assessments, is so construed by the Supreme Court of the State of Illinois, as to validate an assessment made at a time when no legal body existed for the hearing of complaints under the said statute, whether such construction rendered the said statute unconstitutional and void, under the due process clause of the federal constitution.

(4) Where the Illinois Supreme Court, in construing the said assessment statutes aforesaid, have construed the

same strictly against the taxpayers, and liberally in favor of the taxing authorities, contrary to the rules of the United States Supreme Court, as to the construction of taxing statutes, whether such actions should not be set aside, and the contrary view taken by this Court, thus validating the statutes, but reversing the Illinois Supreme Court as to its standards of construction.

(5) Where a statute of assessment permits the assessing officials to act arbitrarily, and without providing for notice, hearing, place or time for hearing, body before which hearing can be had, and where the statute permits the assessing officials to use their own rules as to time, place, and manner of assessment, and where the Illinois Court has ruled that such a statute is constitutional, whether under the Fourteenth Amendment to the United States Constitution, such statute permits an unconstitutional taking of the property of objectors.

(6) Where an assessment statute as construed by the Illinois Supreme Court places extreme discretion in the assessing officials as to time, place and manner of assessment, and where the rule in Illinois and also in the United States Supreme Court, under both constitutions, provides that taxes can be levied, assessed and collected only in a manner created by express statute, whether the Illinois Assessment statute is valid constitutionally?

(7) Whether the legally admissible evidence in said cause shows an unconstitutional taking of the property of objectors by the taxing procedure as shown by said evidence, without due process of law and without equal protection of the law, contrary to the Constitution of the United States.

STATEMENT OF THE CASE

This case involves the objection of 210 tax objectors in the County of Fulton and State of Illinois, involving the amount of approximately $120,000.00 of objected taxes (Abst. pp. 11-15), and an amount of objected assessments in excess of $3,000,000.00. The objections of taxpayers were based on the premise that the assessment of the objectors was void, for the following five reasons:

1. The assessing authorities failed to publish notice of the quadrennial assessment, as required by law.

2. Notice of said assessment was published in such a manner as to deprive the undersigned taxpayer of his hearing, before the Board of Review, as provided by law.

3. That the said assessment is void, because the undersigned taxpayer's property is taken by the procedure of such assessment, without due process of law.

4. That the Board of Review of said County was maintained in session, is contrary to the Statutes in such cases made and provided during said quadrennial assessment year of 1958, and that therefore, by the publication made of such assessment, the undersigned taxpayer had no time for a legal hearing before a legally constituted Board of Review.

5. The said assessment was not published, in the manner required by law, nor in time to give the undersigned taxpayer a chance for a legal hearing, before the 1958 Board of Review, as provided by law. (Abst. pp. 2-3.)

The objections were filed, as provided by law, together with the payment of taxes under protest, and later, in the

application for judgment by the County Collector, the same objections were made in the protest and objections filed in the County Court of Fulton County, Illinois. Trial was had by stipulation, together with some evidence taken, and the names of the objectors, the township in which they owned property, and the amount of their objected taxes was agreed to. (Abst. pp. 4-9.)

There are twenty-six townships in the said county, said county being organized for assessment purposes by townships, and each township having its own assessor, all being supervised by the County Supervisor of Assessments.

The dates of the various steps in the assessment were stipulated, and are as follows:

(All dates listed below are in the year 1958.)

Column 1	Col. 2	Col. 3	Col. 4	Col. 5	Col. 6
Township	Date books filed with supervisor of assessments by local assessor	Date books filed with supervisor of assessments with Board of Review	Last day to file complaint with Board of Review	date of quadrennial assessment Publication	Days notice given by such publication
1. Union	Aug. 4	Sept. 5	Sept. 15	Oct. 2	None—17 days after
2. Ellisville	May 22	July 18	July 29	Aug. 1	None— 3 days after
3. Young Hickory	June 18	July 18	July 29	July 31	None— 2 days after
4. Fairview	June 24	July 18	July 28	Aug. 1	None— 4 days after
5. Farmington	June 26	July 18	July 28	Aug. 7	None—10 days after
6. Lee	July 21	Aug. 5	Aug. 15	Aug. 6	9 days
7. Deerfield	June 6	July 18	July 28	Aug. 1	None— 4 days after
8. Joshua	June 4	July 18	July 28	Aug. 1	None— 4 days after
9. Canton	July 17	Sept 5	Sept. 15	Sept. 26	None—11 days after
10. Orion	May 29	July 18	July 28	Aug. 9	None—12 days after
11. Harris	July 10	Aug. 5	Aug. 15	Aug. 14	1 day
12. Cass	June 20	Aug. 5	Aug. 15	Aug. 7	8 days
13. Putman	June 5	Aug. 5	Aug. 15	July 31	15 days
14. Buckheart	June 3	Aug. 5	Aug. 15	Aug. 22	None— 7 days after
15. Banner	May 31	July 18	July 28	Aug. 9	None—12 days after
16. Farmers	June 20	Aug. 5	Aug. 15	Aug. 14	1 day
17. Bernadotte	June 9	Aug. 5	Aug. 15	Aug. 6	9 days
18. Lewistown	June 9	Aug. 27	Sept. 7	Aug. 27	11 days
19. Liverpool	June 16	Aug. 5	Aug. 15	Aug. 13	2 days
20. Vermont	June 23	Sept. 15	Sept. 25	Oct. 2	None— 7 days after
21. Pleasant	June 19	Sept. 5	Sept. 15	Sept. 4	11 days
22. Isabel	May 23	Aug. 8	Aug. 18	Sept. 3	None—16 days after
23. Waterford	May 23	Aug. 8	Aug. 18	Aug. 20	None— 2 days after
24. Astoria	June 12	Sept. 5	Sept. 15	Sept. 24	None— 9 days after
25. Woodland	May 12	Aug. 8	Aug. 18	Aug. 13	5 days
26. Kerton	June 13	Aug. 8	Aug. 18	Aug. 20	None— 2 days after

(Abst. p. 6.)

The stipulation admitted that the tax protests were made in time, that they were in due form, and all other technical matters. (Abst. p. 8.)

It was stipulated also that the Board of Review for said County, being the Body authorized to review assessments, on complaint by taxpayers, was adjourned by statute on September 7, 1958, unless Collector's Exhibits A, B, C, D, and E, which were introduced in evidence, kept it in session beyond such date of September 7. (Abst. p. 7.) This is significant because this is the only body authorized to hear objections to assessments, and the only place where a hearing could be had as to the amount of such assessments, in such a County as Fulton County, Illinois. Under the statutes in Illinois, the original assessments of the objecting taxpayers were made by the local assessors, without notice; as to each of the objectors in the instant case, this assessment was later raised, also without notice, by the Supervisor of Assessments (Abst. p. 8), and the first notice that any of the taxpayers objecting herein ever had of their assessment was the late publication of the quadrennial assessment, the dates of which are shown herein previously in Column 5 of the foregoing date schedule. (Abst. p. 6.) No other or further notice of any kind was ever given to the objecting taxpayers of their assessment of the quadrennial years beginning in 1958. In the stipulation, it was agreed that the rules of the Board of Review provided that all complaints as to assessment amounts had to be made and on file with the said Board of Review on or before August 1, 1958 (Abst. p. 15), or the same would would not be considered; the attention of the Court is called to the fact, as shown by the Column 5 of date schedule, that only two of the publication dates are prior to August 1, being the Township of Young Hickory shown at Item 3,

published July 31, and the township of Putman, shown at Item 13, published also July 31, each being only one day before the final filing date. All other publications were made after the said date of August 1.

The rules did not permit it, but there was a statute in effect in 1958 which permitted the filing of a complaint ten days after the date the books were filed by the local assessor, and the Supervisor of Assessments, with the Board of Review. (Appendix B, Sec. 589.) This date is shown in Column 3 of the date schedule, and the date of ten days thereafter is shown in the fourth column of the schedule. The fifth column of the schedule shows the publication date in each township, as it actually was made, and the sixth column of the date schedule shows the number of days notice given by such publication, before the last date to file a complaint, even under the statute in question. In sixteen Townships out of the twenty-six, notice was given *after* the dead line under the statute had passed, and in the other ten townships, from one to fifteen days notice was all that was given, even under the statute allowing the extra ten days. If publication had been made by July 10, twenty days notice would have been given to all, prior to August 1st.

Under the Illinois Assessment Statute, as construed by the Illinois Supreme Court, as to personal property, publication of the personal property assessment list by July 10 of each assessment year has been ruled to be mandatory (see *People vs. Jennings*, 3 Ill. 2d 125), and an objection to taxes on personal property, based *solely* on failure to publish the assessment list by July 10, has been held valid, and the tax ordered refunded to the objecting personal property taxpayer. This date of July 10 as to personal

property is contained in the same section of the same statute that is under consideration here, the procedure for assessment of real and personal property being contained in the same section. It is admitted by the pleadings and the proof in the cause that no publication in any township in Fulton County, Illinois, for 1958, of a real estate assessment, was made by July 10; all of such publications being made later than the said date of July 10. (Abst. p. 6.) In his testimony before the Court, the local Supervisor of Assessments blamed the late publication dates on the newspapers, stating that he would send the publication to the papers, and that they would be published much later, entirely without his fault, the delay in publication being due to the time necessary for the newspaper to set up the detail and prepare the list for publication. On a hearing before the County Judge, he overruled the objections. (Appendix C.) A motion to vacate the judgment was filed (Abst. p. 23), alleging error in the judgment as follows:

Because the publication statute as to quadrennial year assessments was mandatory, and because the publication was not published by July 10, in 1958, as required by law;

Because the Board of Review was not legally in session and therefore no body existed before which a hearing could be had by the taxpayers;

Because no notice was given of the quadrennial year assessment at a time when a hearing could be had as a matter of right, before a legally constituted Board of Review;

Because the action of the assessing bodies in Fulton County, Illinois, for the year 1958, with reference to the quadrennial assessment, constituted the taking of the prop-

erty of objectors without due process of law contrary to the Constitutions of Illinois and of the United States.

Because it was based on erroneously admitted evidence.

This motion was overruled on June 17, 1960, and Notice of Appeal was thereafter filed to the Illinois Supreme Court (Abst. p. 25) and the constitutional question under the United States Constitution was raised in the original statement in Brief and Argument for Objectors-Appellants, as shown by Paragraphs Six, Seven, Eight, Nine and Ten, on Page Three of the Statement, Brief and Argument of Appellants as shown in the record, at page 5 thereof.

In the decision of the Supreme Court, the Court in its decision stated that the statute of which the taxpayers were required to take notice, *in itself* gave the notice and hearing required by the statute and the Constitutions of the State of Illinois, and of the United States, and in effect stated that no further publication or notice of any assessment was necessary to be given to the taxpayer, in order to validate the assessment. The Court stated (Appendix A, page 3) "Publication and Notice is not required in order to meet the requirements of due process, *if by some means* the taxpayer has sufficient notice and opportunity of hearing." (Meaning, because the statute itself was on the statute books, and was therefore notice of the *Amount* of the assessment.)

After the decision of the Supreme Court was filed, a Petition for Rehearing was filed, and in the Petition for Rehearing, the attention of the Illinois Supreme Court was called to the fact that its decision would render the assessment statute unconstitutional (Page 4 Petition for Rehearing) and further that the decision would permit un-

equal protection of the law, since the personal property taxpayers under the law in Illinois would get a notice of their assessment by July 10 in any assessment year, while the real estate taxpayer might never get one during the assessment year, at all. (P. 3, Petition for Rehearing.)

On the last Page of the Petition, the attention of the Illinois Supreme Court was called to the fact that its decision invalidated the assessment statute, "as not providing the constitutional guarantees required by the United States Constitution."

The Petition for Rehearing was denied.

Ruling by Illinois Supreme Court

Rulings announced in the case, with reference to constitutionality, are as follows:

A. While a personal property taxpayer in Illinois gets a notice of his assessment by July 10 in each year, a real estate taxpayer is not entitled to such protection, but may get a publication notice of his assessment any time when the assessing officials in their discretion decide to give it.

B. A notice of an assessment on real estate is given by *the statute* providing for assessments in Illinois, and that is sufficient notice to any taxpayer of his real estate assessment, in any given year, since the taxpayer has a duty of knowing what the law is; this ruling in effect states that the assessment statute need not require any actual notice or actual publication of the actual amount of the assessment in any given year, in order to be constitutional.

C. The ruling of the Illinois Supreme Court, as to specific facts, renders it possible for the local assessor to file his books late, for the Supervisor of Assessments to file

his books late, for the Board of Review to fail to publish proper rules, for the Board of Review to adjourn, but yet stay in session, and for a publication of an amount of a real estate assessment to be made after the last filing date for complaints has expired and after the Board of Review has adjourned by statute, the Ruling of the Court giving the assessing officials total discretion uncontrolled by statute, to *when* the publication lists shall be filed and published in the papers. After all of such defects had been proven, the Supreme Court of Illinois ruled that the real estate assessment is still valid, and the assessment statute permitting such uncontrolled actions was held valid.

D. The ruling of the Illinois Supreme Court construed the publication section (Sec. 548) to require the publication of the real estate assessment list "as soon as the Supervisor of Assessments has completed the assessment" (not by July 10th, necessarily). Although Sec. 581 requires that completion by the 3rd Monday of June (June 16, 1958), the books were not filed until September 5, 1958 (81 days late) in Union Township, and the publication was not made until October 2, 1958 (108 days late), nevertheless the objections in this township were overruled, along with the others.

This ruling means that none of the statutes in question is mandatory, and places the real estate taxpayer in Illinois at the mercy of the assessment officials, as to when notice of assessment will be given.

E. The Illinois Supreme Court ruled that "as soon as the assessment is completed" (Sec. 584) meant any reasonable date after the books were filed with the Board of Review, at which time they would be completed. In Union Township, the books were filed on September 5, 1958, and

the publication was made on October 2, 1958 (27 days later), and the assessment was held valid, under the statute. Thus, the Court held that the words "as soon as" were not mandatory.

Substantiation of Federal Questions as to Require Plenary Consideration

I. Due process in taxation cases under state law has always been a subject of Federal consideration, and particularly when notice and hearing, before finality of assessment, are involved.

In the recent case of *Mullane vs. Central Hanover Bank and Trust Company*, 70 S. Ct. 652, the Supreme Court stated this general principle at page 656:

> "Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require the deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case . . .
>
> An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to appraise interested parties of the pendency of the action and afford them an opportunity to present their objections. *Millikin vs. Meyer*, 311 U.S. 457, 61 S. Ct. 339, 85 L. Ed. 278, 132 A.L.R. 1357; *Grannis vs. Ordean*, 234 U.S. 385, 34 S. Ct. 779, 58 L. Ed. 1363; *Priest vs. Board of Trustees of Town of Las Vegas*, 232 U.S. 604, 34 S. Ct. 443, 58 L. Ed. 751; *Roller vs. Holly*, 175 U.S. 398, 20 S. Ct. 410, 44 L. Ed. 520. The notice must be of such nature as reasonably to convey the required information, *Grannis vs. Ordean*, supra, and it must afford *a reasonable time* for those interested to make their appearance, *Roller vs. Holly*, supra, and cf. *Goodrich vs. Ferris*, 214 U. S. 71, 29 S. Ct. 580, 53 L. Ed. 914."

We believe that the following language taken from the opinion of Mr. Justice Fields, in *Williams vs. Board of Supervisors of the County of Albany*, 122 U.S. 154, 30 L. Ed. 1088, from page 1090, defines the law accurately:

> "The completion of the assessment roll in the case at bar before the first of September in the years mentioned, and the form of the oath annexed, were not vital to the assessment itself as necessarily to render the defect arising from a later return or a deficient oath incurable. The completion of the assessment roll by that date was deemed essential by the court below, because the law required the assessors forthwith to cause notices to be published in three of the public newspapers of the city for twenty days, specifying a day at their expiration when they would meet and remain in session for five days for the purpose of reviewing their assessments on the application for any aggrieved. The requirement was designed to afford taxpayers whose names were on the roll an opportunity for the examination and correction of the assessment of their property. *The assessment could not stand if they were deprived of that opportunity.*"

II. This Court has said that due process requires a legal hearing board, for complaints, in taxation cases.

In the case of *Nickey vs. Mississippi*, 292 U.S. 392, 78 L. Ed. 1323, 1326, wherein was summarized the rulings in four previous cases, the Court said:

> "There is no constitutional command that notice of the assessment of a tax and an opportunity to contest it must be given in advance of the assessment. It is enough that all available defenses may be presented *to a competent tribunal* before exaction of the tax and before the command of the state to pay it becomes final and irrevocable."

III. This Court has held that statutes designed for the protection of citizens, and to prevent sacrifice of their property, are mandatory.

In *French vs. Edwards*, 80 U.S. 506, 20 L. Ed. 702, this Court stated:

> "There are, undoubtedly, many statutory requisitions intended for the guide of officers in the conduct of business devolved upon them which do not limit their power or render its exercise in disregard of the requisitions ineffectual. Such, generally, are regulations designed to secure order, system and dispatch in proceedings, and by a disregard of which the rights of parties interested cannot be injuriously affected. Provisions of this character are not usually regarded as mandatory unless accompanied by negative words importing that the acts required shall not be done in any other manner or time than that designated. But when the requisitions prescribed are intended for the protection of the citizen, and to prevent a sacrifice of his property, and by a disregard of which his rights might be, and generally would be, injuriously affected, they are not directory but mandatory. They must be followed or the acts done will be invalid. The power of the officer in all such cases is limited by the manner and conditions prescribed for its exercise."

Lyon vs. Alley, 130 U.S. 177, 32 L. Ed. 899, involved construction of a statute requiring a commissioner of improvements to deposit the assessment roll with the "register" who was then required to "place in the hands of the collector of taxes a list of the persons chargeable with such tax, together with the amount due by each person." The statute further provided that within ten days after receiving such list the collector shall give notice in writing to each taxpayer. In holding that the requirements were intended to be mandatory, the Court declared:

> "The provisions of statutes as to the form and mode

of assessments, as to tax lists, and the place where the tax lists are to be deposited, are, according to the highest authority, designed for the benefit of the taxpayers and the protections of their property from sacrifice."

IV. This Court has always required equal protection of the law, under the Constitution, for all classes of property, under taxing statutes.

In *Raymond vs. Chicago Union Traction Company*, 207 U.S. 20, 52 L. Ed. 78, this Court held a taxing statute bad which provided different rates and methods of taxation for some corporations, as distinguished from certain other corporations.

In *Road Dist. #7 vs. St. Louis (etc.) R.R. Co.*, 28 Fed. 2d, 825, a federal court held that an assessment law was bad, where disproportionate taxation was *probable*.

In *Louisville (etc.) R.R. Co. vs. Bosworth*, 230 Fed. 191, it was held that a tax law which discriminated without proper classification violated equal protection.

In *Nashville R.R. Co. vs. Taylor*, 86 Fed. 168, a taxing statute resulting in an arbitrary discrimination against a large species of property was held to be class legislation and void.

The Illinois Supreme Court, in *Ogara Coal Co. vs. Emmerson*, 383 Ill. 153, held that a taxing statute involving no par stock of foreign corporations was bad constitutionally, where it penalized one kind of foreign corporation.

Under the law in Illinois, now, if you had an old automobile and if the personal property assessment notice was not published by July 10 in the assessment year, you could

object to the tax on the old car, and this tax objection would be sustained by the Illinois Supreme Court.

Conversely, if you had one thousand acres of the best ground in Illinois, and if the publication was made on October 2 in the assessment year, as was done in two townships in the instant case, at a time when the Board of Review had legally been dissolved, at a time when any complaint before any Board of Review could have been dismissed because it was not filed in time, under the rules and the statute in question, yet a tax objection as to the tax on this real estate would be overruled, under the ruling in the instant case.

The fourteenth amendment of the United States Constitution is directed against discriminatory state action by any state instrumentality, against any person within the jurisdiction of the state of Illinois. In the instant case, the discrimination complained of is the singling out of real estate property owners in the state of Illinois, by the instant decision, as to relief from over-assessment.

The Supreme Court of Illinois, in *Michigan Millers Mutual Fire Insurance Company vs. McDonald*, 358 Ill. 575, does recognize that the Fourteenth Amendment requires that any classification for the purpose of taxation be based on a real and substantial difference, having a rational relation to the subject of the particular legislation, and in a recent case in Illinois, the Supreme Court of this state has decided that railroad property cannot be assessed at 100% of the full fair cash market value, while real estate of other persons is assessed at 60% of its fair cash market value, following the Federal Rule.

In the instant case, the provisions for publication as to real and personal property are contained in the same section of the statute, and no classification is provided in said

section, or in any other place in said statute, and thus no basis is provided for permitting a waiver of, or a lesser amount of *notice*, as to real estate, than is permitted in the case of personal property. The real estate needs more protection than personal property, from several points of view:

A. Assessed valuation of personal property in any state is much less than the total assessed valuation of real estate in the same state, on a dollar basis.

B. A personal property taxpayer has some notice of the assessment on personal property, because of a visit by the assessor at the time of the assessment; the real estate taxpayer never sees the assessor, as to his real estate, and his first notice of any valuation placed on his real estate is the publication notice which is supposed to be given.

C. Real estate in Illinois is valued by assessment for a four year period, while personal property is assessed for only one year at a time. Thus, an assessment of real estate, if erroneous, will carry the error through for a period of four years, and thus a need for more notice, rather than less notice, is apparent, to prevent injustice in assessment of real estate.

D. It will also be apparent that there will be many businesses dealing with personal property, as an article of commerce, and other businesses which deal with real estate, as an article of commerce, and that the rule in Illinois, as decided in the instant case, would result in arbitrary discrimination against the real estate business, as opposed to the personal property business.

E. There is no standard in the law, now, after the decision in the instant case, governing the time when real estate publications, as to assessment lists, must be made.

Mr. Justice Earl, in *Albany City National Bank vs. Maher*, 9 Fed. 884, at page 889, stated:

> "It matters not upon the question of the constitutionality of such a law that the assessment has, in fact, been fairly apportioned. The constitutionality of the law is tested, not by what has been done under it, but what may, by its authority, be done."

Under the law in Illinois, as construed by the instant decision, an assessor of real property could wait until after the Board of Review had been dismissed and gone home, and until after the last right for review had disappeared, and then could publish the real estate assessment lists, thus completely depriving the real estate taxpayer from any right to a hearing, before any tribunal. Appellants submit that such a law, construed in such a way, provides no protection for real estate taxpayers in the State of Illinois.

SUMMARY

Appellants submit that the infringements of their rights as shown by the record in this case, ought to be freely pursued in a court of last resort, and ought not to be denied Appellants, except on plenary consideration of the case.

Respectfully submitted,

CHARLES R. HOLTON
11 South LaSalle Street
Chicago 3, Illinois

ARTHUR D. YOUNG
Young Building
Lewistown, Illinois

Attorneys for Appellants.

"APPENDIX A"

Docket No. 36074—Agenda 43—November, 1960.
The People *ex rel.* Virgil Ball, County Collector, Appellee,
v. Claude W. Anderson, *et al.*, Appellants.

Mr. Justice Hershey delivered the opinion of the Court:

This is a proceeding on application of the county collector of Fulton County for judgment for delinquent taxes for the year 1958. Some 210 objectors had paid their taxes under protest, objecting to the validity of the 1958 quadrennial assessment. The objections were overruled and the court entered appropriate orders for the sale of certain of the lands and for disposition of the tax funds paid under protest. A post-trial motion for judgment was overruled. This appeal is from the above-stated orders of the county court.

Although there was some testimony offered and received, together with some exhibits, a stipulation of facts constitutes the bulk of the record in this case. This stipulation discloses that the various township assessors in Fulton County undertook the assessment of real property and on dates varying from May 12, 1958, to August 4, 1958, these township assessors completed their assessments and turned their township assessment books over to the supervisor of assessments.

The assessments as made by the township assessors as to the objectors were all increased by the supervisor of assessments.

The township assessment books were turned over by the supervisor of assessments to the board of review of the

county, beginning on July 18, 1958, for the first township, and ending on September 15, 1958, for the last of the townships. Publication of all assessments was made by the supervisor of assessments, commencing on July 31, 1958, and ending with the last publication of assessments on October 2, 1958.

On May 6, 1958, the board of review of the county was organized and commenced upon its duties. The board stayed in session, hearing complaints and acting as a board of review until December 17, 1958. Some 23 of the objectors appeared as complainants before the board. The balance of the objectors did not request hearings or otherwise appear before the board. All objectors paid 100% of their real estate taxes under protest prior to June 1, 1959.

On October 1, 1959, the county collector, after notice and publication, made application for judgment on delinquent taxes. The objections to the 1958 assessment were on file with the court. The assessment is sought to be declared void as depriving the taxpayers of their property without due process, since, it is contended, no opportunity was given for a hearing before a validly constituted board of review that was legally in session.

It is further contended that any publication of assessments after July 10, 1958, was not a valid publication, as is required by the appropriate statutory provisions, and, further, that the publication of assessments, even if otherwise valid, was late, being published after the deadline for filing complaints before the board of review.

The statutory plan for the assessment of real estate for taxing purposes in counties of the size of Fulton contemplates that the assessment shall be made in the first instance by the township assessor. Thereafter, the super-

visor of assessments has the same authority as the township assessor to assess and to make changes or alterations in the assessment of the property as made by the township assessors. All changes and alteration in the assessment of real property, as, indeed, is the original assessment, are subject to revision by the board of review. The taxpayer's right to appear before the board of review and be heard as to the correctness of his assessment is after the assessment list is required by law to be published, in accordance with the provisions of section 103 of the Revenue Act of 1939. Ill. Rev. Stat. 1959, chap. 120, par. 584.

A review of the applicable statutory provisions indicates that in quadrennial assessment years the supervisor of assessments is required to publish a full and complete list of the assessments of the real and personal property by townships as soon as he has completed the assessment. In other years, the supervisor of assessments is required to publish the assessment of personal property in full and a list of real estate for which assessments have been added or changed since the last preceding assessment, together with the amounts of the assessments on such real estate. Such publication shall be made on or before July 10 of that year in counties with less than 150,000 inhabitants. The foregoing statutory provision, being essentially the language of section 103 of the Revenue Act of 1939, is the statutory provision which, in the view of the objectors, requires publication of the quadrennial assessment on or before July 10 of the assessment year. It seems clear, however, from a reading of the language with reference to the requirement for publication, that in quadrennial years the supervisor of assessments is required to publish as soon as he has completed the assessment. As to other years, the assessment is required to be made on or before July 10.

It has been held that the foregoing section imposes a mandatory duty to make publication and that the appropriate official can be compelled to perform that duty by *mandamus*, although the statutory time for the performance thereof has passed. (*People ex rel. Rentschler ex. Walsh*, 334 Ill. App. 519.) It has further been held, however, that there is no constitutional requirement for the publication of a tax assessment list and that the legislature has the power to waive the publication if it sees fit so to do. (*People ex. Holmstrom*, 8 Ill. 2d 401.) This last cited case involved personal property assessment lists.

In the case of *Dietman ex. Hunter*, 5 Ill. 2d 486, we held that due process of law requires only that a property owner be given notice and opportunity to be heard upon the valuation of his property at some point in the taxing process before his liability to pay the tax becomes conclusively established. In this connection, we there stated: "The requirements of due process are satisfied by a law which affords an opportunity to be heard with respect to assessments before the board of review. 'But a law prescribing a time when complaints will be heard before the board of review is all the notice that is required. [Citation.] If the law secured to the defendant a hearing after the assessment was in fact made, of which he had notice by the statute, that would be sufficient.' (*Carney ex. People*, 210 Ill. 434, 440; *cf. Hagar ex. Reclamation District No. 108*, 111 U.S. 710; *People ex. International Salt Co.*, 233 Ill. 223; *People ex. Shirk*, 252 Ill. 95.)"

Thus, it would appear that the duty to publish is a duty that can be enforced by *mandamus*, but that publication and notice is not required in order to meet the requirements of due process, if, by some means, the taxpayer has sufficient notice and opportunity of a hearing. The provision for the

publication of a tax assessment list found in section 103 of the Revenue Act of 1939, above discussed, is a means of affording taxpayers notice as to the amount of their assessments. The requirement there found as to quadrennial years contemplates the publication as soon as the taxing process has been completed, and the July 10 date obviously relates to years other than quadrennial assessment years, and the failure of the supervisor of assessments to publish the tax assessments prior to July 10 in the quadrennial assessment year can have no application as to the validity of the assessment.

Turning, next, to the consideration as to whether or not the board of review of Fulton County was legally in session, section 107 of the Revenue Act of 1939 (Ill. Rev. Stat. 1959, chap. 120, par. 588), provides that the board of review in a county of the size of Fulton shall be finally adjourned on or before September 7, provided that in the years of quadrennial assessments, with the approval of the county board, the board may remain in session until not to exceed 30 days after the September 7 date. In the present case, the board of review was, of course, in session more than 30 days after the September date and the record demonstrates that the board of supervisors approved of the additional time in that the board adopted a resolution providing for the payment of the *per diem* compensation for the additional time. After the expiration of the 30-day period, the record indicates that additional extensions of time were obtained for additional time for the board of review from the Department of Revenue, presumably exercising the authority given it under sections 140 and 144 of the Revenue Act (Ill. Rev. Stat. 1959, chap. 120, pars. 621 and 625). Further, in the case of *People ex rel. Lunn vs. Chicago Title and Trust Co.*, 409 Ill. 505, and in the case

of *Barkley vs. Dale*, 213 Ill. 614, we have previously indicated that statutory provisions establishing specific adjournment dates for a board of review were to be considered directory only and that actions by the board of review subsequent to the statutory adjournment date would be treated as valid sessions of a legally constituted and functioning board of review and that the board could continue to operate under color of office and its acts would be considered valid, even though subsequent to the statutory adjournment date.

Thus, it appears in this proceeding that the quadrennial assessment publication was made as required by law; that the objectors had notice of the assessment and a reasonable opportunity to file objections before the board of review and obtain a hearing before a duly constituted body empowered to correct any defects in the tax assessment machinery.

It is finally contended by the objectors that a *prima facie* case was lacking in the county court in that the collector did not introduce in evidence the delinquent list, the published notice, nor the collector's affidavit, which are said to be necessary in order to make out a *prima facie* case. In this case, however, the parties, by stipulation, supplied all of the necessary facts for a *prima facie* case. (*People ex rel. Bronza vs. Anderson*, 411 Ill. 252.) Aside from the fact that the stipulation supplies the *prima facie* case, it appears from record that this objection was first raised on this appeal and was not timely presented in the county court.

A careful review of the record in this case demonstrates to us that the orders of the county court of Fulton County were correct, and the orders of that court are affirmed.

Orders affirmed.

"APPENDIX B"

Section 524. Assessments in quadrennial years.

"In counties having a population of less than 500,000 inhabitants, the quadrennial assessment years shall be 1954 and every fourth year thereafter . . . "

"On or before June 1.....the assessor in person or by his deputy shall actually view and determine as near as practicable the value of each tract or lot of land listed for taxation as of April 1 of such year and assess the same at its fair cash value . . ."

Section 575. Return of assessment books by township assessors.

"The township assessors in counties under township organization of less than 150,000 inhabitants shall, on or before the first day of June for the year for which the assessment is made, return the assessment books to the supervisor of assessments . . ."

Section 576. Assessments and changes by supervisor of assessments.

"The supervisor of assessments shall have the same authority as the township assessor to assess and to make changes or alterations in the assessment of property, and shall assess and make such changes or alterations in the assessment of property as though originally made . . ."

Section 581. Return of assessment books to board of review.

"In counties having a population of less than 500,000 inhabitants, the assessor, board of assessors or supervisor of assessments, as the case may be, shall on or before the third Monday in June of the year for which the assessment is made, return the assessment books to the board of review verified by affidavit . . ."

Section 584. Publication in counties of less than 500,000; newspapers' fees.

"In counties containing less than 500,000 inhabitants, as soon as the county assessor, supervisor of assessments or board of assessors, as the case may be, has completed the assessment he or it shall, in each year of a quadrennial assessment of real property, publish a full and complete list of the assessment of real and personal property, by townships if the county be so organized. In years other than years of a quadrennial assessment of real property, the assessor, supervisor of assessment or board of assessors, as the case may be, shall publish the assessment of personal property in full and a list of real estate for which assessments have been added or changed since the last preceding assessment, together with the amounts of the assessments on such real estate. Such publication shall be made on or before July 10, of that year in counties with less than 150,000 inhabitants . . ."

Section 588. Meeting of board of review.

"In counties containing less than 500,000 inhabitants, the board of review may meet at such times as it deems necessary.....Provided, that the final adjournment of the board of review in counties of 50,000 or less inhabitants shall be on or before September 7;.....provided that in the years of quadrennial assessments, with the approval of the county board, the board of review in all counties of less than 100,000 inhabitants may remain in session until not to exceed 30 days after the dates hereinabove specified for their adjournment . . ."

Section 589. Powers and duties of board of review.

"In counties containing less than 500,000 inhabitants, the board of review shall, in any year whether the year of the quadrennial assessment or not: . . ."

"On complaint in writing that any property de-

scribed in such complaint is incorrectly assessed, the board shall review the assessment, and correct the same, as shall appear to be just. Such complaint to affect the assessment for the current year shall be filed on or before the first day of August in counties with less than 150,000 inhabitants..... Provided, that if the assessment books containing the assessment complained of are not filed with the board of review by the 20th day of July in a county of less than 150,000 inhabitants.....then such complaint shall be filed on or before ten days after such lists are filed....."

Section 591. Completion of work of board of review—Affidavit.

"The board of review in counties containing less than 500,000 inhabitants, shall, or or before the annual date for adjournment as fixed by section 107 of this Act, complete its work . . ." (Sec. 588, above.)

"APPENDIX C"

Telephone 57 Lewistown, Illinois

FRANCIS P. MURPHY
County Judge
Fulton County

June 1, 1960

Mr. Arthur D. Young
Attorney at Law
Lewistown, Illinois

Mr. Blaine Ramsey
State's Attorney
Lewistown, Illinois

Mr. Lachlan Crissey
Attorney at Law
Lewistown, Illinois

Mr. Ralph Froehling
Attorney at Law
Canton, Illinois

RE: IN THE MATTER OF APPLICATION FOR JUDGMENT BY THE COUNTY COLLECTOR. NO. 59-467-L

TAX OBJECTIONS FOR THE YEAR 1958, CLAUDE W. ANDERSON, ET AL.

Gentlemen:

May I express to each of you my appreciation for the many hours which you have given and the several conferences you have attended, in helping the Court to resolve the problems presented by the protests of payment of taxes filed by property owners of Fulton County, represented by Mr. Young. At your request and by stipulation and agreement among you the Court has confined its attention

to the legal problems presented by objections numbered Two, Three, Four, Five and Six, and it was further agreed and stipulated that an appeal might be made from my ruling here today on said objections Two, Three, Four, Five and Six, without either parties losing their rights to present the remaining three objections to this Court at some later date if they so desire.

Basically, the several objections raised by the objectors appear to the Court to raise two basic questions: First, whether or not, the objectors had sufficient notice of the assessment of the property in question and second, whether or not, the objectors had an opportunity to file a complaint with the Board of Review and to be heard thereon. The evidence presented to the Court would appear to give an affirmative answer to each question. Since we are concerned at this time only with the five specific objections enumerated, the Court hereby dismisses those objections, reserving to all parties concerned the right, if any so desire, to further hearing on the remaining three objections numbered One, Seven and Eight made at the time the original protests of payment of taxes were filed.

Sincerely,
Francis P. Murphy
County Judge
Fulton County
Illinois

FPM:ks

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1961.

No. 326

VIRGIL BALL, County Treasurer,
Plaintiff-Appellee,

vs.

DELINQUENT LANDS, ETC., 1958;
IN THE MATTER OF APPLICATION FOR JUDGMENT
BY THE COUNTY COLLECTOR,
TAX OBJECTIONS FOR THE YEAR 1958
CLAUDE W. ANDERSON, *et al.,*
Objectors-Appellants.

APPEAL FROM THE SUPREME COURT OF ILLINOIS.

MOTION TO DISMISS APPEAL.

ORAL C. KOST,
State's Attorney,
Lewistown, Illinois,
BLAINE RAMSEY,
19 West Elm Street,
Canton, Illinois,
and
LACHLAN CRISSEY,
188 North Adams Street,
Lewistown, Illinois,
Assistant State's Attorneys,
Attorneys for Appellee.

CHAMPLIN-SHEALY COMPANY, CHICAGO 60

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1961.

No.

VIRGIL BALL, County Treasurer,

Plaintiff-Appellee,

vs.

DELINQUENT LANDS ETC., 1958;

IN THE MATTER OF APPLICATION FOR JUDGMENT BY THE COUNTY COLLECTOR,

TAX OBJECTIONS FOR THE YEAR 1958

CLAUDE W. ANDERSON, *et al.*,

Objectors-Appellants.

APPEAL FROM THE SUPREME COURT OF ILLINOIS.

MOTION TO DISMISS APPEAL

Now comes Virgil Ball, County Treasurer, Plaintiff-Appellee herein, and moves the Court that said application may be dismissed and assigns as reasons therefor the following:

1. That no substantial Federal question is involved.

2. That although the constitutionality of a statute of the State of Illinois has been raised upon this appeal, that it is raised for the first time in this Court and was not raised in the trial court nor the Illinois Supreme Court.

STATEMENT

Appellants rely upon sub-section 2 of Section 1257 of Title 28 of the Judicial Code of the United States to sustain their rights of petition to appeal. This subsection requires that the validity of a statute of the State be drawn in question and a decision by the State Court is in favor of its validity. The record in this case will disclose that at no time did the appellants question the validity of any statute and more particularly Section 584 of Chapter 120, Illinois Revised Statutes 1957 edition. Their objection upon this ground was "That the assessment is void, because ..... prop. rty is taken by the procedure of such assessment, without due process of law." The objections and the matters raised on appeal to the Illinois Supreme Court all went to the failure upon the part of the Supervisor of Assessment to publish within what was claimed to be proper time or because the Board of Review remained in session after the legal date for adjournment. At no time was the validity of Section 584 or any other statute raised in the trial court or the Illinois Supreme Court. Therefore the present attempt to raise the question of the constitutionality of Section 584 or any other Illinois Statute does not come within the scope of sub-section 2 of Section 1257 of Title 28 as above set forth.

The Court's attention is invited to Paragraph 2 on Page 5 of the Jurisdictional Statement in which appellants attempt to raise a further question of the constitutionality of the assessment statutes by inferring that the statute and opinion has been construed to be mandatory to require the assessments of personal property before July 10th in *any* assessment year but that it is not mandatory as to real property in the quadrennial years. There is no basis for this position either in the statute or in the construction thereof by the Illinois Supreme Court. Section 584 clearly states that in the years of the quadrennial assessment the Supervisor of Assessments shall publish a full and complete list of the assessment of real *and personal property*. That no place in the opinion of the Illinois Supreme Court is it stated that the publication of personal property must be made by July 10th in the quadrennial year but the inference is clear that they held that the statute simply means that in the quadrennial year the assessments of real and *personal* shall be made after the assessments are completed. The opinion of the Illinois Supreme Court only held that the publication of assessments in non-quadrennial years shall be on or before July 10th. The reason behind this statute is very obvious as the work of the Supervisor of Assessments is greatly increased in the year of the quadrennial assessments of real estate and for that reason he is given additional time within which to complete his assessments of real and personal property and to publish the same. It is therefore respectfully suggested to the Court that all of the argument of counsel in the jurisdictional statement as to the alleged discrimination between real and personal property is without any basis whatsoever.

The only real basis for the objections of the appellants was the fact that because of alleged late publications that

they did not have the right to appear before a legally constituted Board of Review. The record discloses and the opinion recognizes the fact that the Board of Review did legally remain in session for an ample length of time after publication to hear all objections, and that all objections filed were acted upon. There is no claim at any time by any of the appellants that they were denied a hearing or that they did not have a full and complete opportunity to be heard by the Board of Review after the publication of the assessment lists. It is respectfully suggested that all of the objections went to the interpretation of local statutes by the State Supreme Court and that under the language of all of the cases submitted by appellants the only requirement of the Fourteenth Amendment is that at some place in the assessing procedure the taxpayer be given an opportunity to appear and object to the assessment of his tax. This opportunity was secured to them in this case and there is no claim that they did not have the opportunity.

SUMMARY.

It is therefore respectfully submitted by appellee that the petition to appeal may be dismissed as the appellants at no time in the Trial Court or Illinois Supreme Court ever raised the question of the constitutionality of any statute but only as to the procedures employed thereunder and that therefore they do not come within the provisions permitting an appeal in such instance; that furthermore the other matters of a general nature in which it is claimed that due process was denied are not sufficient to constitute

a substantial Federal question either under the Fourteenth Amendment or any other constitutional provision of the United States of America.

Respectfully submitted,

ORAL C. KOST,
State's Attorney,
Lewistown, Illinois.

BLAINE RAMSEY,
19 West Elm Street,
Canton, Illinois.

and

LACHLAN CRISSEY,
188 North Adams Street,
Lewistown, Illinois,
Assistant State's Attorneys.

Attorneys for Appellee